

**This Opinion is Not a  
Precedent of the TTAB**

Mailed: May 19, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*Tumblr, Inc.*

*v.*

*Mark David-Dale Kindy*

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Opposition No. 91252639

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Thomas L. Holt and James R. Davis, II of Perkins Coie LLP  
for Tumblr, Inc.

Mark David-Dale Kindy  
pro se.

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Before Wolfson, Larkin and Hudis,  
Administrative Trademark Judges.

Opinion by Hudis, Administrative Trademark Judge:

Mark David-Dale Kindy (“Applicant”), appearing pro se, seeks registration on the Principal Register of the proposed mark TUMBLOG (in standard characters) for “[p]roviding customized on-line web pages and data feeds featuring user-defined

information, which includes blog posts, new media content, other on-line content, and on-line web links to other websites,” in International Class 42.<sup>1</sup>

In its Amended Notice of Opposition,<sup>2</sup> Tumblr, Inc. (“Opposer”) opposes registration of Applicant’s proposed TUMBLOG mark on the grounds that: (1) it is generic with respect to Applicant’s identified services (Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. §§ 1051-1053 and 1127) (Claim I); or (2) it is merely descriptive of Applicant’s identified services (Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1)) without having acquired distinctiveness (Trademark Act Section 2(f), 15 U.S.C. § 1052(f) (Claim II); or (3) the proposed mark, as applied to the services identified in the Application, so resembles Opposer’s TUMBLR marks, registered on the Principal Register in connection with, inter alia:

Providing on-line non-downloadable software for social networking and media sharing and consumption via the internet; application service provider (asp) featuring software to enable or facilitate...blogging,

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<sup>1</sup> Application Serial No. 88219371 was filed on December 6, 2018, based upon Applicant’s allegation of a *bona fide* intention to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. §1051(b).

In the Application, the mark appears on the drawing page with the first three letters capitalized (“TUMblog”), but Applicant retained a claim as to standard characters and not special form. *See* Trademark Rules 2.52(a) and (b), 37 C.F.R. §§ 2.52(a) (setting forth requirements for standard character and special form drawings); *see also* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPE) §§ 807.03 and 807.04 (“Standard Character Drawings” and “Special Form Drawings”) (July 2022). For consistency in analyzing standard character marks, our references to Applicant’s mark in this opinion in all uppercase letters reflects that a term in standard character format is not limited to any particular, font style, size, or color. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1910 (Fed. Cir. 2012); *see also In re Calphalon Corp.*, 122 USPQ2d 1153, 1158-61 (TTAB 2017) (applicant’s amendment of mark from SHARPIN to SharpIn did not transform mark from standard character to special form).

<sup>2</sup> Amended Notice of Opposition, 12 TTABVUE 10-20. References to the pleadings, the evidence of record and the parties’ briefs refer to the Board’s TTABVUE docket system. Coming before the designation TTABVUE is the docket entry number; and coming after this designation are the page and paragraph references, if applicable.

linking, sharing or otherwise providing electronic media or information over communication networks...; and Providing a web site featuring technology that enables users to upload and share video, music, photos, text, graphics and data; maintaining blogs for others in International Class 42.<sup>3</sup>

as to be likely to cause confusion, mistake, or deception (Trademark Act Section 2(d), 15 U.S.C. § 1052(d)) (Claim III); or (4) it is likely to dilute the distinctiveness of Opposer's registered TUMBLR marks (Trademark Act Section 43(c), 15 U.S.C. § 1125(c)) (Claim IV). Applicant denied the salient allegations of the Amended Notice of Opposition in his Answer but, as we discuss below, provided some notable admissions.<sup>4</sup>

The case is fully briefed. It is Opposer's burden to establish that the proposed TUMBLOG mark is generic by a preponderance of the evidence. *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1554 (Fed. Cir. 1991). Having considered the evidentiary record, the parties' arguments, and applicable authorities, as explained below, we find that Opposer has carried this burden, and sustain the Opposition on this basis. Because we resolve this proceeding based on Opposer's genericness claim, we need not, and do not, reach Opposer's other claims. *CBC Mtg. Agency v. TMRR, LLC*, 2022 USPQ2d 748, at \*29 n. 22 (TTAB 2022).

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<sup>3</sup> The recitation of services recited above in the body of our decision does not comprise the entirety of the goods and services for which Opposer's TUMBLR marks are registered. Opposer's registered marks asserted in the Amended Notice of Opposition are: TUMBLR (Reg. No. 3714214, issued on November 24, 2009 for services in Classes 41 and 45); TUMBLR (Reg. No. 4319728, issued on April 16, 2013 for goods and services in Classes 9, 35, 38 and 42); TUMBLR (stylized) (Reg. No. 4341002, issued on May 28, 2013 for goods and services in Classes 9, 35, 38, 41 and 42); and TUMBLR. (stylized) (Reg. No. 4341003, issued on May 28, 2013 for goods and services in Classes 35, 38, 41, 42 and 45).

<sup>4</sup> Answer to Amended Notice of Opposition [14 TTABVUE].

## **I. The Evidentiary Record**

The record consists of the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the file of Applicant's involved application. In addition, Opposer attempted to introduce the following materials under its first Notice of Reliance ("ONOR1"), 18 TTABVUE :

- The parties' original (pre-amendment) pleadings and attachments;
- Opposer's motion to amend its Notice of Opposition with exhibits; and
- The Amended Notice of Opposition, and the Answer to the Amended Notice of Opposition with attachments.

For a number of reasons, we decline to consider any of the materials attached to ONOR1. Once Opposer filed, and the Board accepted, the Amended Notice of Opposition, and Applicant answered it, the parties' original pleadings became moot. An amended pleading, once allowed, supersedes any prior pleadings, particularly an amended pleading that is complete in itself and does not adopt or make any reference to the earlier pleadings. *Jet Inc. v. Sewage Aeration Systems*, 223 F.3d 1360, 55 USPQ2d 1854, 1858 (Fed. Cir. 2000); *Michael S. Sachs Inc. v. Cordon Art B.V.*, 56 USPQ2d 1132, 1136 n.10 (TTAB 2000). As for the amended pleadings themselves, although they automatically form part of the record (and thus need not have been introduced by Notice of Reliance) the parties' assertions therein are not evidence unless supported by other evidence separately introduced at trial, except as a party's admission against interest. *Saul Zaentz Co. v. Bumb*, 95 USPQ2d 1723, 1725 n.7 (TTAB 2010).

With the exception of the copies of Opposer's asserted TUMBLR registrations, the attachments to Opposer's and Applicant's pleadings are not evidence on behalf of the party to whose pleading the exhibit is attached, and must be identified and introduced in evidence as an exhibit during the period for the taking of testimony. Trademark Rules 2.122(c) and (d)(1), 37 C.F.R. §§ 2.122(c) and (d)(1). Even as to Opposer's asserted TUMBLR registrations, as noted below, copies of these registrations were attached to Opposer's Second Notice of Reliance. There was no need to file this evidence twice. "The Board views the practice of introducing cumulative evidence at trial with disfavor." *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at \*13 (TTAB 2022).

Opposer's motion to amend its Notice of Opposition comprises mere attorney argument, having no independent evidentiary value. *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005) ("Attorney argument is no substitute for evidence."). The attachments to Opposer's motion to amend comprise the entirety of Applicant's discovery responses. To the extent they have evidentiary value, Opposer filed copies of these discovery responses again with its Third Notice of Reliance. We only consider these discovery responses once. *Made in Nature*, 2022 USPQ2d 557, at \*13.

Opposer also attached to ONOR1 an email exchange comprising settlement negotiations. This material is completely inadmissible. Fed. R. Evid. 408(a). In short, the attachments to ONOR1 have no probative value.

Opposer also introduced into evidence:

- Opposer's Second Notice of Reliance ("ONOR2") on copies of Opposer's pleaded TUMBLR registrations, accompanied by abstracts of those registrations from the Trademark Status & Document Retrieval ("TSDR") system of the U.S. Patent and Trademark Office ("USPTO"), pursuant to Trademark Rule 2.122(d)(1), 37 C.F.R. § 2.122(d)(1). [19 TTABVUE].<sup>5</sup>
- Opposer's Third Notice of Reliance ("ONOR3") on copies of the entireties of Opposer's and Applicant's Initial Disclosures, as well as Opposer's interrogatories, production requests and admissions requests, and Applicant's responses thereto, pursuant to Trademark Rule 2.120(k), 37 C.F.R. § 2.120(k). [20 TTABVUE].

The registration certificates and TSDR printouts of Opposer's pleaded registrations are admissible under Trademark Rule 2.122(d)(1), 37 C.F.R. § 2.122(d)(1). Applicant's Initial Disclosures, as filed by Opposer, are admissible; Opposer's Initial Disclosures, as filed by Opposer, are not. Trademark Rule 2.120(k)(5), 37 C.F.R. § 2.120(k)(5). Opposer's interrogatories, and Applicant's answers thereto, are admissible. Trademark Rule 2.120(k)(3)(i), 37 C.F.R. § 2.120(k)(3)(i). Only Applicant's admissions to Opposer's Admissions Requests are admissible; Applicant's denials are not. *Ayoub, Inc. v. ACS Ayoub Carpet Serv.*, 118 USPQ2d 1392, 1395 n.9 (TTAB 2016) ("admissions are properly of record, the denials are not"); *see also Life Zone Inc. v. Middleman Grp. Inc.*, 87 USPQ2d 1953, 1957 n.10 (TTAB 2008).

Applicant's responses to Opposer's Production Requests introduced through ONOR3 are admissible solely for purposes of showing that Applicant has stated that

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<sup>5</sup> TSDR abstracts of Opposer's pleaded TUMBLER registrations were attached to the original Notice of Opposition, but not the Amended Notice of Opposition. Although not crucial to our decision here, a party's pleaded registrations should only be made of record once.

there are no responsive documents; any documents Applicant may have produced in response to Opposer's Production Requests were not attached; produced documents are generally not admissible by notice of reliance alone. Trademark Rule 2.120(k)(3)(ii), 37 C.F.R. § 2.120(k)(3)(ii); *see also City Nat'l Bank v. OPGI Mgmt. GP Inc./Gestion OPGI Inc.*, 106 USPQ2d 1668, 1674 n.10 (TTAB 2013) (responses to document production requests are admissible solely for purposes of showing that a party has stated that there are no responsive documents); *ShutEmDown Sports Inc. v. Lacy*, 102 USPQ2d 1036 n.7 (TTAB 2012) (written responses to document requests indicating that no documents exist may be submitted by notice of reliance).

Opposer further made of record:

- Opposer's Fourth Notice of Reliance ("ONOR4") on copies of printed publications (articles) available to the general public, pursuant to Trademark Rule 2.122(e)(1), 37 C.F.R. § 2.122(e)(1). [21 TTABVUE].
- Opposer's Fifth Notice of Reliance ("ONOR5") on webpages and other documents (dictionary definitions, archive copies of pages from the Obama White House website, articles, member pages and pages by topic from the TUMBLR website, and TUMBLR app download pages) publicly available on the Internet, including the date and the source from which they were accessed and printed, pursuant to 2.122(e)(2), 37 C.F.R. § 2.122(e)(2). [22-23 TTABVUE].

We call out separately Opposer's Westlaw search results for "tumblog tumblelog," and Opposer's Google search results for "tumblogs," included with the Fifth Notice of Reliance [22 TTABVUE 68-75, 196-210]. Many of these search result entries do not provide sufficient surrounding context to provide a useful understanding of these terms as may otherwise be shown on the underlying publications or websites from which the captured text originated (but which have not been provided). Thus, these Westlaw and Google search results have low probative value. *Cf. Frito-Lay N. Am.*,

*Inc. v. Princeton Vanguard, LLC*, 124 USPQ2d 1184, 1193 (TTAB 2017) (Google results “are not very probative” because they “are very truncated and do not provide us with sufficient information upon which to make a clear finding.”), *appeal dismissed without prejudice sub nom. Snyder’s-Lance, Inc. v. Frito-Lay N. Am., Inc.*, 414 F. Supp. 3d 822, 2019 USPQ2d 401574 (W.D.N.C. 2019), *rev’d and remanded on other gnds.*, 991 F.3d 512 (4th Cir. 2021).

Opposer additionally submitted:

- Opposer’s Sixth Notice of Reliance (“ONOR6”) on copies of pleadings, orders and decisions from previous opposition and cancellation proceedings initiated by Opposer before the Board against third parties that are publicly available on the USPTO website on the date and at the URL from which they were accessed and printed, pursuant to Trademark Rule 2.122(e)(2), 37 C.F.R. § 2.122(e)(2). [24 TTABVUE].
- Opposer’s Seventh Notice of Reliance (“ONOR7”) on printouts of webpages and other documents (dictionary definitions and news articles) publicly available on the Internet on the date and at the source from which they were accessed and printed, pursuant to Trademark Rules 2.122(e)(1) and (2). [29 TTABVUE].
- Testimony Declaration of Tammy Gales, Ph.D. Opposer’s linguistics expert, with her Report (“Gales Rep.”) and additional appendices collectively attached as an exhibit, pursuant to Trademark Rule 2.123(a)(1), 37 C.F.R. § 2.123(a)(1). [25 TTABVUE].
- Testimony Declaration of Catherine Holderness (“Holderness Decl.”), Opposer’s Head of Editorial, with attached exhibits, pursuant to Trademark Rule 2.123(a)(1). [26 TTABVUE].
- Testimony Declaration of Henry Chang (“Chang Decl.”), an Offices Services Specialist with Opposer’s counsel, with attached exhibits, pursuant to Trademark Rule 2.123(a)(1). [30 TTABVUE].

Applicant filed with the Board only one Notice of Reliance [32 TTABVUE], with no exhibits attached, which states: “I do not have anything to submit that has not already been submitted by the Opposer as evidence.... Furthermore, ... this case is grounded purely in semantics, so any evidence on which I would rely is self-evident,

such as the definitions of words and their grammar, and therefore need not be addressed in a Notice of Reliance or any other part of the Pre-Trial Disclosure period.”

## **II. The Parties**

Although its ownership has changed several times,<sup>6</sup> Opposer since its founding in 2007 has provided microblogging, content posting, and social networking services, and downloadable electronic publications, to its clientele in connection with the TUMBLR mark.<sup>7</sup> In 2019, Applicant founded a non-profit organization called The User-Managed Network, or “TUMnet” for short, to provide a social media platform covering all aspects of social media, including the creation and hosting (by TUMnet or the end-user) of blog-style content. Applicant intends the proposed TUMBLOG mark to serve as the name of the blogging service provided by TUMnet.<sup>8</sup>

## **III. Entitlement to a Statutory Cause of Action**

Entitlement to a statutory cause of action, formerly referred to as “standing” by the Federal Circuit and the Board, is an element of the plaintiff’s case in every inter partes case. *See Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 2020 USPQ2d 11277, at \*6-7 (Fed. Cir. 2020), *cert. denied*, 141 S. Ct. 2671 (2021); *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 2020 USPQ2d 10837, at \*3 (Fed. Cir. 2020), *cert. denied*, 142 S. Ct. 82 (2021); *Empresa Cubana Del Tabaco v.*

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<sup>6</sup> “Houston’s Matt Mullenweg talks about his acquisition of Tumblr,” HOUSTON CHRONICLE, August 13, 2019 (13-15); ONOR4, 21 TTABVUE 13-15; “Tumblr’s a rare safe haven amid all of the internet’s ugliness, CNET, August 30, ONOR5, 23 TTABUVE 152-160;

<sup>7</sup> Holderness Decl., 26 TTABVUE 3, ¶¶ 6-7.

<sup>8</sup> Applicant’s Int. Ans. Nos. 2-3, ONOR3, 20 TTABVUE 66-67; Answer to Amended Notice of Opposition, 14 TTABVUE 2.

*Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014). To establish entitlement to a statutory cause of action, a plaintiff must demonstrate: (i) an interest falling within the zone of interests protected by the statute, and (ii) a reasonable belief in damage proximately caused by the registration of the mark. *Corcamore*, 2020 USPQ2d 11277 at \*4 (citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 109 USPQ2d 2061, 2067-70 (2014)); *Meenaxi Enter., Inc. v. Coca-Cola Co.*, 38 F.4th 1067, 2022 USPQ2d 602, at \*2 (Fed. Cir. 2022); *Spanishtown Enters., Inc. v. Transcend Resources, Inc.*, 2020 USPQ2d 11388, at \*1 (TTAB 2020).

Stated another way, a plaintiff is entitled to bring a statutory cause of action by demonstrating a real interest in the proceeding and a reasonable belief of damage. *Australian Therapeutic Supplies*, 2020 USPQ2d 10837, at \*3; *Empresa Cubana*, 111 USPQ2d at 1062. There is “no meaningful, substantive difference between the analytical frameworks expressed in *Lexmark* and *Empresa Cubana*.” *Corcamore*, 2020 USPQ2d 11277 at \*4. Thus, “a party that demonstrates a real interest in [oppos]ing a trademark under [Trademark Act Section 13, 15 U.S.C.] § 106[3] has demonstrated an interest falling within the zone of interests protected by [the Trademark Act] .... Similarly, a party that demonstrates a reasonable belief of damage by the registration of a trademark demonstrates proximate causation within the context of § 106[3].” *Id.*, 2020 USPQ2d 11277 at \*7.

When challenging a term as generic, a plaintiff may establish its entitlement to a statutory cause of action by showing that it is engaged in the promotion and sale of services that are the same as or related to those covered by the challenged mark

within the normal expansion of the plaintiff's business. *See Int'l Dairy Foods Assn. v. Interprofession du Gruyère*, 2020 USPQ2d 10892, at \*10 (TTAB 2020), *aff'd*, 575 F.Supp.3d 627 (E.D. Va. 2021), *aff'd*, 61 F.4th 407, 2023 USPQ2d 266 (4th Cir. 2023); *Eastman Kodak Co. v. Bell & Howell Document Mgmt. Prods. Co.*, 23 USPQ2d 1878, 1879 (TTAB 1992), *aff'd*, 994 F.2d 1569, 26 USPQ2d 1912 (Fed. Cir. 1993); *Binney & Smith, Inc. v. Magic Marker Indus., Inc.*, 222 USPQ 1003, 1010 (TTAB 1984).

Here, Opposer alleges that TUMBLOG is “an unprotectable generic term that identifies the type of services offered by Applicant and is highly useful as a term to describe competing or related goods and services.”<sup>9</sup> Applicant admits that TUMBLOG “is intended to be used for identical [g]oods and [s]ervices as Opposer’s [g]oods and [s]ervices[,]” that “consumers will be using the [g]oods and [s]ervices under the [proposed] ‘TUMblog’ mark under substantially the same conditions as the Opposer’s [g]oods and [s]ervices are used by its consumers[,]” and that “the [g]oods and [s]ervices provided under the [proposed] ‘TUMblog’ mark will compete with the [g]oods and [s]ervices of the Opposer.”<sup>10</sup> Opposer therefore has adequately pleaded and demonstrated its entitlement to maintain a statutory cause of action against Applicant’s TUMBLOG Application.

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<sup>9</sup> Amended Notice of Opposition, 12 TTABVUE 16, ¶ 10.

<sup>10</sup> Applicant’s Adm. Resp. Nos. 8, 27 and 28, ONOR3, 20 TTABVUE 49, 52. *See also* Amended Notice of Opposition, 12 TTABVUE 18, ¶ 20, which states: “Applicant uses his mark in connection with services that are identical and closely related to Tumblr’s Goods and Services[,]” and which Applicant admitted in his Answer to the Amended Notice of Opposition. 14 TTABVUE 7, ¶ 20.

#### IV. Applicable Law

“At the lowest end of the distinctiveness scale [of marks and terms] is ‘the generic name for the goods or services.’ ... The name of the good [or service] itself ... is incapable of ‘distinguish[ing] [one provider’s services ...] from the [services] ... of others’ and is therefore ineligible for registration. ... Indeed, generic terms are ordinarily ineligible for protection as ... [service marks] at all.” *U.S. Patent & Trademark Off. v. Booking.com B.V.*, 140 S. Ct. 2298, 2020 USPQ2d 10729, at \*3-4 (2020). Such terms can never attain service mark status because “[t]o allow ... [service mark] protection for generic terms, i.e., names which describe the genus of ... [the services] being sold, even when these have become identified with a first user, would grant the owner of the mark a monopoly, since a competitor could not describe his ... [services] as what they are.” *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987) (quoting *CES Publ’g Corp. v. St. Regis Publ’ns, Inc.*, 531 F.2d 11, 188 USPQ 612, 615 (2d Cir. 1975)).

“A generic term is one that refers to the genus of which the particular ... [service] is a species.” *Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 224 USPQ 327, 329 (1985); see also *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Cir. 2001) (A designation is generic if it refers to the class or category of goods or services on or in connection with which it is used.) (citing *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 532 (Fed. Cir. 1986)); *In re 1800Mattress.com IP LLC*, 586 F.3d 1359, 92 USPQ2d 1682, 1685 (Fed. Cir. 2009) (“The test is not only whether the relevant public would

itself use the term to describe the genus, but also whether the relevant public would understand the term to be generic.”).

The U.S. Court of Appeals for the Federal Circuit additionally has said that “a term can be generic for a genus of goods or services” if the relevant public “understands the term to refer to a key aspect of that genus.” *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1637 (Fed. Cir. 2016); *see also Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1047 (Fed. Cir. 2018). In this regard, if the proposed mark defines “an integral, if not the paramount, aspect of ... [the] services[,] as [the Applicant] defines ... [them,]” the term or phrase sought for registration may be found to be generic for those services. *See In re Reed Elsevier Props. Inc.*, 482 F.3d 1376 , 82 USPQ2d 1378, 1380 (Fed. Cir. 2007) (affirming refusal of LAWYERS.COM as generic for an online database featuring an information exchange of law, legal news, and legal services).

Moreover, there can be more than one generic term for a genus of goods or services. *See In re 1800Mattress.com*, 92 USPQ2d at 1685 (“We also disagree with Dial-A-Mattress’s assertion that there can only be one generic term, which is ‘online mattress stores.’ Instead, any term that the relevant public understands to refer to the genus of ‘online retail store services in the field of mattresses, beds, and bedding’ is generic.”); *Roselux Chem. Co. v. Parsons Ammonia Co.*, 299 F.2d 855, 132 USPQ 627, 632 (CCPA 1962) (“[I]n considering whether ‘sudsy ammonia’ is a common descriptive name of the product we cannot fail to take into consideration the class of people who will commonly be using it and what they will commonly call

it.”); *Clairol, Inc. v. Roux Distrib. Co.*, 280 F.2d 863, 865, 126 USPQ 397, 398 (CCPA 1960) (“The same ... [service] may, and often does, have more than one generic name.”).

Whether a particular term is generic is a question of fact. *In re Hotels.com LP*, 573 F.3d 1300, 91 USPQ2d 1532, 1533 (Fed. Cir. 2009). Resolution of that question depends on the primary significance of the term to the relevant public. *Booking.com*, 2020 USPQ2d 10729, at \*5 (“[T]he relevant meaning of a term is its meaning to consumers.”). “The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question.” *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827, 1830 (Fed. Cir. 2015) (quoting *Marvin Ginn*, 228 USPQ at 530 ).

The genericness inquiry is a two-part test: “First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?” *In re Reed Elsevier*, 82 USPQ2d at 1380 (quoting *Marvin Ginn*, 228 USPQ at 530 ).

#### **A. Genus of the Services**

“[A] proper genericness inquiry focuses on the description of services set forth in the [application or] certificate of registration.” *Magic Wand*, 19 USPQ2d at 1552. In many instances, as in this case, there is no dispute that the Application’s identification of services adequately defines the genus. *In re Nordic Naturals, Inc.*, 755 F.3d 1340, 111 USPQ2d 1495, 1496 (Fed. Cir. 2014) (“The Board found that

the relevant goods were adequately defined by Nordic's description: 'nutritional supplements containing DHA.');" *In re 1800Mattress.com IP LLC*, 92 USPQ2d at 1684 ("In this case, the parties agree that the genus of services is 'online retail store services in the field of mattresses, beds, and bedding.'). Cf. *In re Am. Inst. of Certified Pub. Accts.*, 65 USPQ2d 1972, 1981-82 (TTAB 2003) ("The observation [that the definition of the genus can substantially affect the final determination] seems not to have gone unnoticed by either applicant or the examining attorney, who argue for different definitions of the involved class of goods.").

Here, Opposer argues:

Applicant's applied-for services are "[p]roviding customized online web pages and data feeds featuring user-defined information, which includes blog posts, new media content, other on-line content, and on-line web links to other websites." Applicant's application defines the genus—"providing customized on-line web pages and data feeds featuring user-defined information"—and then lists examples, or species, of that genus—"blog posts, new media content, other on-line content, and on-line web links to other websites."<sup>11</sup>

Applicant, in his brief, does not dispute Opposer's contentions regarding the relevant genus of the services involved in this proceeding. Generally, however,

Applicant concedes:

I am largely on record as, if not accepting Opposer's conclusions, then at least accepting their facts and submitting none of my own. ... I do not disagree entirely with Opposer on the basic facts of this case; I only disagree with the conclusion that the ... [proposed] mark "TUMblog" is not valid ....<sup>12</sup>

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<sup>11</sup> Opposer's Brief, 33 TTABVUE 28.

<sup>12</sup> Applicant's Brief, 35 TTABVUE 2-3.

Thus, Opposer's assertion that the identification of services in Applicant's application defines the relevant genus as "providing customized on-line web pages and data feeds featuring user-defined information" stands unrebutted; and we so find.

**B. Perception of the Proposed Mark by the Relevant Public**

**1. The Relevant Public**

Once the genus of the services is determined, we next must determine whether the relevant public understands the proposed TUMBLOG mark primarily to refer to "providing customized on-line web pages and data feeds featuring user-defined information." "[T]he understanding of the 'relevant public' [is] central to the genericness inquiry." *Magic Wand*, 19 USPQ2d at 1552. For this purpose, "the 'relevant public' ... means [those members of the] public ... [who do] or may purchase the goods or services in the marketplace." *Id.* at 1552-53.

Here, Opposer's linguistics expert, Dr. Gales, identifies the relevant public as "consumers ... [of] blog sites or the services provided by such sites[.]"<sup>13</sup> Applicant identifies the typical or target consumers of his services as "[e]veryone, [e]verywhere."<sup>14</sup> We find that the relevant purchasing public comprises members of the general public who do or may take advantage of the services provided by blogging websites, including customized web pages and data feeds provided by such websites.

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<sup>13</sup> Gales Rep., 25 TTABVUE 9, ¶¶ 17-18.

<sup>14</sup> Applicant's Int. Ans. No. 8, ONOR3, 20 TTABVUE 68.

## 2. Assessing the Relevant Public's Perception

“Evidence informing [the] ... inquiry [whether a term is generic] can include not only consumer surveys, but also dictionaries, usage by consumers and competitors, and any other source of evidence bearing on how consumers perceive a term's meaning.” *Booking.com*, 2020 USPQ2d 10729 , at \*7 n.6; *see also In re Cordua*, 118 USPQ2d at 1634 (citing *Princeton Vanguard*, 114 USPQ2d at 1830 (quoting *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985) (“Evidence of the public's understanding of the mark may be obtained from ‘any competent source, such as consumer surveys, dictionaries, newspapers and other publications.’”)); *Cont'l Airlines Inc. v. United Air Lines Inc.*, 53 USPQ2d 1385, 1395 (TTAB 1999) (use of term “e-ticket” by media and competitors indicates term is generic for electronic tickets).

Assessing the relevant public's perception of Applicant's proposed TUMBLOG mark is the crux of the parties' disagreement, although as noted above—except for Applicant's admissions in his Answer and in his discovery responses—it is only Opposer who has provided evidence intended to address that question.

## V. Evidence on the Question of Genericness

### A. Applicant's Pleading Admissions

On the genericness question, in his Answer to Opposer's Amended Notice of Opposition, Applicant admitted the following allegations asserted in the Amended Notice of Opposition:

- The term “tumblelog” and its contraction “tumblog” are generic, or at best highly descriptive, for a microblog or a short-form blog. [Amended Notice of

Opposition, 12 TTABVUE 15, ¶ 6; Answer to Amended Notice of Opposition, 14 TTABVUE 4, ¶ 6].

- The regular and generic use of the term “tumblelog” or “tumblog” in connection with blogging platforms is prevalent now and was prevalent many years prior to the filing date of the Application or claimed date of first use of Applicant’s [proposed] [m]ark. [Amended Notice of Opposition, 12 TTABVUE 16, ¶ 7; Answer to Amended Notice of Opposition, 14 TTABVUE 4, ¶ 7].
- Now and as of the filing date of the Application, the term “tumblog” is meant to refer to short-form blogs or microblogs. [Amended Notice of Opposition, 12 TTABVUE 16, ¶ 9; Answer to Amended Notice of Opposition, 14 TTABVUE 4, ¶ 9].

### **B. Applicant’s Interrogatory Answer No. 2**

In answering Opposer’s interrogatories, Applicant stated:

Given that the words “tumblelog” and its shortened version “tumblog” have existed since 2007 (in relatively common use at the time, but whose use waned significantly over time), using the mark “TUMblog” was a no-brainer. Even if it is unregistrable [sp] in the eyes of the USPTO due to it failing to distinguish itself significantly from the generic word “tumblog”, it’s essentially inevitable that people using the service would begin referring to it as “TUMblog”. I don’t know if it’s possible for a generic word to become so associated with a good or service that it effectively becomes a trademark, but I expect there will be a time when anyone who says “tumblog” is explicitly referring to the blogging service provided by TUMnet.<sup>15</sup>

### **C. Definitions from Dictionaries and other Reference Works**

Opposer made of record the following definitions from dictionaries and other reference works (emphasis added):

- A **blog** and the act of **blogging** has been defined in dictionaries that Opposer provided:
  - **Blog** – a regular record of your thoughts, opinions, or experiences that you put on the internet for other people to read.<sup>16</sup>
  - **Blog** – a website containing a writer’s or group of writers’ own experiences, observations, opinions, etc., and often having images and

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<sup>15</sup> Applicant’s Int. Ans. No. 2, ONOR3, 20 TTABVUE 66.

<sup>16</sup> Blog, CAMBRIDGE DICTIONARY, June 8, 2022, ONOR7, 29 TTABVUE 7.

links to other websites. **Blogging** – to maintain or add new entries to a blog; to express or write about on a blog.<sup>17</sup>

- **Blog** – computers: a website that contains online personal reflections, comments, and often hyperlinks, videos, and photographs provided by the writer; also : the contents of such a site; a regular feature appearing as part of an online publication that typically relates to a particular topic and consists of articles and personal commentary by one or more authors. **Blogging** – to write or have a blog; to write or write about (something) on a blog.<sup>18</sup>
- **Microblogging** is an online broadcast medium that exists as a specific form of blogging. A micro-blog differs from a traditional blog in that its content is typically smaller in both actual and aggregated file size. Micro-blogs allow users to exchange small elements of content such as short sentences, individual images, or video links, which may be the major reason for their popularity. These small messages are sometimes called micro posts. ... Commercial micro-blogs also exist to promote websites, services, and products and to promote collaboration within an organization. Some microblogging services offer ... alternative ways of publishing entries besides the web-based interface. These may include text messaging, instant messaging, e-mail, digital audio, or digital video.<sup>19</sup>
- A **tumblelog** is a variation of a blog, that favors short-form, mixed-media posts over the longer editorial posts frequently associated with blogging. Common post formats found on tumblelogs include links, photos, quotes, dialogues, and video. Unlike blogs, this format is frequently used to share the author’s creations, discoveries, or experiences without providing a commentary. The term “**tumblelog**” was coined by Why the lucky stiff in a blog post on April 12th, 2005, while describing Anarchaia.<sup>20</sup>
- **Tumblelog** meaning: (Internet) A microblog on the Tumblr microblogging service.<sup>21</sup>
- **Tumblelog**, etymology: tumble + log, an early term for microblog, coined by Why the Lucky Stiff in 2005, based on the tagline of Leah Neukirchen’s Anarchaia blog: “experimental, impressionistic sub-paragraph tumblin”;

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<sup>17</sup> Blog and Blogging, DICTIONARY.COM, June 3, 2022, ONOR7, 29 TTABVUE 15-16.

<sup>18</sup> Blog and Blogging, MERRIAM-WEBSTER, June 3, 2022, ONOR7, 29 TTABVUE 26-27.

<sup>19</sup> Microblogging, WIKIPEDIA, April 7, 2022, ONOR5, 22 TTABVUE 40 (cleaned up).

<sup>20</sup> Tumblelog, URBAN DICTIONARY, April 7, 2022, ONOR5, 22 TTABVUE 17.

<sup>21</sup> Tumblelog meaning, YOUR DICTIONARY, April 7, 2022, ONOR5, 22 TTABVUE 21.

**tumblelog** (plural **tumblelogs**): (Internet) A microblog, especially one on the Tumblr microblogging service.<sup>22</sup>

- **Tumblelog**, definitions: noun, Internet: A microblog on the Tumblr microblogging service; etymologies: tumble + log; examples: “The Tumblr name stems from tumblelog, which is a short-form mixed-media blog”; “The name stems from tumblelog, which is a short-form mixed-media blog; A tumble log is a blog stripped of all the non-essential stuff: no categories, no comments, no monthly archives, no fancy layouts, widgets.<sup>23</sup>
- **tumblelog** (English): origin & history: tumble + log; noun (pl. **tumblelogs**): (internet) A microblog on the Tumblr microblogging service; Examples:
  - 2007, THE DEAL (volume 5, page 26): Tumblr, launched in March, allows users to publish digital files or brief blog posts to a single online location, dubbed a **tumblelog**.
  - 2009, Gavin Bell, BUILDING SOCIAL WEB APPLICATIONS (page 133): Twitter and **tumblelogs** work equally well in this case. However, blogging and longer forms of writing are still important for communicating complex or longer ideas.
  - 2011, Dr Kay Irie, Dr Alison Stewart, REALIZING AUTONOMY: At the same time as maintaining activity on my **tumblelog**, I was communicating with other bloggers outside the group, collaborating with other teachers at my own institution, reflecting alone and reading both online and on paper.<sup>24</sup>

#### D. News Articles

Opposer also made of record a number of articles, the following passages from which we find most relevant (all emphasis added):

- Tumblr itself gives the impression that this is the main use-case for its service by highlighting almost exclusively this type of **Tumblog** in The Tumblr Directory. ... [A] large percentage of Tumblr users actually don't WANT an audience. They do not want to be found, except by a few close friends who they explicitly share one of their **tumblogs** with.<sup>25</sup>

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<sup>22</sup> Tumblelog, WIKTIONARY, April 7, 2022, ONOR5, 22 TTABVUE 25.

<sup>23</sup> Tumblelog - definition and meaning, WORDNIK, April 7, 2022, ONOR5, 22 TTABVUE 28.

<sup>24</sup> Tumblelog: meaning, origin, definition - WORDSENSE DICTIONARY, April 7, 2022, ONOR5, 22 TTABVUE 34-37.

<sup>25</sup> “Tumblr Is Not What You Think,” TECHCRUNCH, February 18, 2013, ONOR5, 22 TTABVUE 113.

- **Tumblogging**, posting short, often multimedia, blog posts on sites like Tumblr, has been consistently growing in popularity for a couple of years now. Tumblr is the most well-known **tumblog** service out there, but there are also themes that can turn your Word Press blog into a tum blog-style site. **Tumblogging** is a great option for those people who don't want to post long blog posts, but do want to share images, music, videos, and other snippets of content with their followers. There's less pressure with a **tumblog** than there is with a regular blog, and it's often viewed as a much more casual kind of presence.<sup>26</sup>
- Tumblr makes it dead simple to post images, videos, quotes, or links on your blog, and many users prefer this to full blog posts. However, most blogs today are powered by WordPress, which you can run on your own server and customize your site more extensively than you can on Tumblr. WooThemes recently released a free plugin, Woo**Tumblog**, that makes it easy to transform your WordPress blog into a perfect **tumblog**.<sup>27</sup>
- Matt Mullenweg is the CEO of Automattic, the company that owns WordPress.com, which he co-founded, and Tumblr, the irrepressible social network it acquired from the wreckage of AOL, Yahoo, and Verizon. ... Mullenweb (Interviewee): I would love for you to try Tumblr again, and send me your feedback. Whatever you want to follow is cool. Whatever bugs you find –; Interviewer: I will put it back on my phone today. My blog was a **Tumblog** for a long time. Mullenweb: We could spin that back out – a place to aggregate your articles or your podcasts. Just be weird. Be weird on the internet again. It's fun. Interviewer: I'll see if I can open my old **Tumblog**.<sup>28</sup>
- If you don't want your heirs figuring out that you had a secret **Tumblog** clogged with pictures of [actress] Natalie Portman, maybe you should just arrange for it to be "incinerated." If nothing else, those Entrusted users figure they are leaving behind some guidelines about which bits of their online lives matter, and which don't.<sup>29</sup>

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<sup>26</sup> "Tumblogging: WordPress vs. Tumblr," WEBDESIGNER DEPOT, Blog Archive, November 15, 2011, ONOR5, 22 TTABVUE 125-26.

<sup>27</sup> "Turn Your WordPress Blog Into a Tumblr-style Tumblog," TIPS GENERAL, April 8, 2022, ONOR5, 22 TTABVUE 146.

<sup>28</sup> "How WordPress and Tumblr are keeping the internet weird: CEO Matt Mullenweg on why he bets big on small companies (Interview with Mullenweg)," THE VERGE, March 15, 2022, ONOR5, 23 TTABVUE 10, 40.

<sup>29</sup> "Cyberspace When You're Dead," NEW YORK TIMES, January 9, 2011 ONOR7, 29 TTABVUE 97.

Opposer also made of record other news articles that make generic use of the word “tumblelog,” which Applicant concedes is the source of the derivative term “tumblog.”<sup>30</sup> Thus, this evidence corroborates that “tumblog” is generic.

#### **E. Declaration Testimony from Opposer’s Linguistics Expert**

Dr. Gales is an Associate Professor of Linguistics and the Director of Research for the Institute for Forensic Linguistics, Threat Assessment, and Strategic Analysis at Hofstra University in New York.<sup>31</sup> Dr. Gales also has trained as a lexicographer, and has worked as a senior analyst and researcher on a variety of cases assessing “genericity” [genericness] and likelihood of confusion in trademark disputes.<sup>32</sup> According to Dr. Gales, “[l]inguistics is defined as the systematic study of language and languages. It is a broad-ranging discipline whose object of analysis is language structure and language use and whose methodologies are scientific and social-scientific. Linguistic analysis relies on systematic observation of language data and, in some subfields, experimental work.”<sup>33</sup>

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<sup>30</sup> For generic uses of “tumblelog,” see: “60+ Stunning Tumblr Statistics You Need to Know in 2022,” TECH JURY, May 14, 2022, ONOR5, 22 TTABVUE 179; “The real origins of Tumblr,” THE DAILY DOT, May 23, 2013, updated June 1, 2021, ONOR5, 23 TTABVUE 75-85; “These Screengrabs Show David Karp Did NOT Invent The ‘Tumblelog’ That Gave Birth To Tumblr,” BUSINESS INSIDER, May 26, 2013, ONOR5, 23 TTABVUE 87-97; “Buzzwords 2007: All We Are Saying,” NEW YORK TIMES, December 23, 2007, ONOR7, 29 TTABVUE 49, 62. “Tumblelog” also was mentioned as a “buzzword” by the NEW YORK TIMES the following year at: “Sidebar: Previous Years’ Buzzwords,” NEW YORK TIMES, December 21, 2008, ONOR7, 29 TTABVUE 69.

<sup>31</sup> Gales Rep., 25 TTABVUE 4, ¶ 2.

<sup>32</sup> Gales Rep., 25 TTABVUE 5, ¶¶ 6-7.

<sup>33</sup> Gales Rep., 25 TTABVUE 5, ¶¶ 6-7.

Dr. Gales offers her “expert opinion as to the use of the term ‘tumblog’ and to the similarity between the TUMBLR mark and the term ‘TUMblog’ including their sight, sound, and sense [meaning].”<sup>34</sup> It is only the first part of Dr. Gales opinion with which we are herein concerned. Dr. Gales report is based on her professional knowledge and expertise, and on her research using established and accepted linguistic knowledge and methodology.<sup>35</sup> We find that Dr. Gales is qualified to provide testimony as a linguistics expert.

In Dr. Gales professional opinion:

the term “tumblog” has been used as a generic term to refer to sites that allow users to create “blogs”.... This opinion is based on several established principles of linguistics, and of an analysis of individual websites, dictionaries, and corpora – large searchable collections of authentic language that are representative of a particular language variety.

According to ... [Applicant’s] Answer to the Notice of Opposition ..., the origin of the term “TUMblog” comes from the word “tumblelog” (a combination of “tumble” and “web-logging”), which changed shortly thereafter to “tumblog”, due to what ... [Applicant] describes as “normal human nature [that] led to some people shortening the world[sic]...”. While it is clear that the term “tumblog” (or “tumblelog”, for that matter) is not as frequently used today as the more common “blog”, some consumers are still familiar with the common noun “tumblog” and use it generically to mean a short blog that allows users to embed audio/visual materials or links to other such materials. When looking for instances of “tumblog” in the iWeb corpus – a collection of 14 billion words from 22 million web pages – both “Tumblog”, as visually represented as a capitalized proper name (although most instances refer to generic blogging uses), and “tumblog”, as visually represented as a lower case common noun not associated with a source of goods or services, are found. ...

Thus, while “tumblog” as a term is not as well represented in modern English as the current use of “blog”, the term is still used as a common noun by a range of blogging consumers. In fact, in ... [Applicant’s] own

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<sup>34</sup> Gales Rep., 25 TTABVUE 6, ¶ 10.

<sup>35</sup> Gales Rep., 25 TTABVUE 5, ¶ 8.

Answer to the Notice of Opposition, he makes this very point when he describes the term “tumblog” as “a common noun which can be used to define what services like Tumblr, Twitter, Facebook, and others deal in: **Tumblr lets users make tumblogs.** (Emphasis original).<sup>36</sup>

Applicant did not object to Dr. Gales’ testimony. We find Dr. Gales’ testimony is admissible, in that it is relevant to us as the trier of fact on the question of whether TUMBLOG is a generic term. *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1401 (TTAB 2010).

Generally, the testimony of a linguistics expert has been accepted on questions such as to how a term or mark will be perceived or pronounced. *See Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 57 USPQ2d 1557, 1559 (Fed. Cir. 2001) (affirming the Board’s finding of likelihood of confusion based in part on the declaration of a French language professor, opining on how the parties’ marks will be perceived and pronounced as French words or phrases based upon their construction and appearance). Linguistics expert testimony also has been accepted in the areas of lexical semantics (the study of the use of words and lexicography), the evolving history of the meaning of a term in American English, and the evaluation of a term in current American English usage. *Blackhorse v. Pro-Football, Inc.*, 111 USPQ2d 1080, 1091-92 (TTAB 2014) (accepting the testimony of various linguistics experts as to the meaning of REDSKINS “within the context of their [respective] specialties”), *aff’d*, 112 F. Supp.3d 439, 115 USPQ2d 1524 (E.D. Va. 2015), *vacated and remanded on other gnds.*, 709 Fed. Appx. 182 (4th Cir. 2018). We find that Dr.

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<sup>36</sup> Gales Rep., 25 TTABVUE 6-8, ¶¶ 11-14.

Gales' expert testimony regarding the derivation of the word "tumblog" is useful to us, and that it corroborates other evidence in the record on that issue – including Applicant's admissions.

On the other hand, we need not and do not rely on Dr. Gales' opinion on the ultimate factual issue in the case, whether TUMBLOG is generic. *See In re Hikari Sales USA, Inc.*, 2019 USPQ2d 111514, at \*10 (TTAB 2019). The Board is the ultimate arbiter of whether TUMBLOG is generic based on our assessment of the record as a whole, and we will not substitute the opinion of a witness, even an expert witness, for our evaluation of the facts. *Fisons Ltd. v. UAD Labs., Inc.*, 219 USPQ 661, 663 (TTAB 1983).

As noted, Dr. Gales relied upon dictionary materials, Applicant's admissions and statements made in his Answer, the DAILY DOT article regarding the origins of TUMBLR,<sup>37</sup> and the results of a "tumblog" search on iWeb in coming to the conclusion that TUMBLOG is a generic term for Applicant's identified services of interest. All of this is evidence we can evaluate (and have evaluated) for ourselves. Thus, while Dr. Gales' expert linguistics testimony is probative on the issue of the derivation of the word "tumblog," and her overall opinion is consistent with our ultimate finding in this proceeding, we do not rely upon her expert opinion that TUMBLOG is generic.

## **VI. TUMBLOG is Generic: Analysis and Discussion**

We have considered numerous sources regarding the public's perception of TUMBLOG in association with "[p]roviding customized on-line web pages and data

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<sup>37</sup> See note 30 above.

feeds featuring user-defined information, which includes blog posts, new media content, other on-line content, and on-line web links to other websites.” (Applicant’s identified services). *Booking.com*, 2020 USPQ2d 10729, at \*7 n.6. These sources include definitions from dictionaries and other reference works, news articles spanning a period of over a decade, Applicant’s discovery answers and admissions, and the testimony of Opposer’s linguistics expert.

These evidentiary sources uniformly point us to one conclusion: Applicant’s proposed mark TUMBLOG is a generic term for Applicant’s services.<sup>38</sup> The relevant public, consumers of blog sites or the services provided by such sites, perceive a “blog” to mean a regular record of one’s thoughts, opinions, or experiences put on the internet for other people to read, often accompanied by images and links to other websites. These same members of the public understand a “microblog” to be a specific form of blogging; one whose content is typically shorter, allowing users to exchange smaller elements of textual content (paragraphs or short sentences), images, video links, or links to other websites. The relevant public also understands a “tumblog”, a contraction from “tumblelog” whose etymology is from the terms “tumble” and “log,” to be an alternative generic term for a microblog, that is, a specific form of a blog whose content is typically shorter, allowing users to exchange smaller elements of

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<sup>38</sup> Applicant argues that the Examining Attorney “who processed his Application” did not deem the mark generic, and that this fact should somehow govern our decision here. Applicant’s Brief, 35 TTABVUE 4. However, “[t]he Board is not bound by the actions of the Trademark Examining Attorney who, of course, did not have the benefit of the evidence which has been introduced in these proceedings.” *Hilson Rsch. Inc. v. Soc’y for Hum. Res. Mgmt.*, 27 USPQ2d 1423, 1439 (TTAB 1993).

textual content (paragraphs or short sentences), images, video links, or links to other websites. As we noted earlier, prior decisions have stated that there can be more than one generic term for a genus of services, *In re 1800Mattress.com*, 92 USPQ2d at 1685; *Roselux Chem. Co.*, 132 USPQ at 632; *Clairol v. Roux Distrib.*, 126 USPQ at 398, and this proceeding provides an example of such a circumstance.

**Decision:**

The opposition is sustained on the ground that TUMBLOG is generic for Applicant's identified services.<sup>39</sup>

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<sup>39</sup> Because we resolve this proceeding based on Opposer's genericness claim, we need not, and do not, reach Opposer's other claims. *Multisorb Tech., Inc. v. Pactiv Corp.*, 109 USPQ2d 1170, 1171 (TTAB 2013).